IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.1778 OF 1995

M. Vidyasagar .. Petitioner

-Vs-

Deputy General Manager,
Syndicate Bank,
Zonal Office,
Syndicate Bank Building,
Gandhi Nagar,
Bangalore 560 009. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.K. Srinivasan

For Respondent : Mr.K.S.V. Prasad

:J U D G M E N T

Petitioner is an employee under the Syndicate Bank. He has prayed for quashing the charge memo dated 15.4.1994 issued by the Deputy General Manager, Syndicate Bank, Zonal Office, Bangalore.

2. The petitioner was functioning as Sub-Manager of the Syndicate Bank, Kodambakkam branch from 4.2.1985 to 21.7.1986. During the said period, an employee had obtained loan from the bank by pledging her jewels. The jewels were to be kept in safe custody under double-lock system and one of the keys is to be with the petitioner and the Assistant Manager is the custodian of the other key. At the time of redemption of the jewels, it was suspected that the jewels had been substituted. Prosecution under Section 409 IPC was launched. During investigation of the said criminal case, the petitioner was placed under suspension. Initially the petitioner was convicted by the trial court by judgment dated 27.4.1989. Criminal Appeal No.93/89 filed by the petitioner was also dismissed by the Second Additional Sessions Judge,Madras by judgment dated 17.11.1989. During pendency of the appeal, the petitioner had been dismissed from service by order dated 16.9.1 989 on the ground of conviction in a criminal case. The petitioner had filed appeal before the departmental authorities. Subsequently, after confirmation

of the order of conviction by the appellate court, the petitioner filed Crl.R.C.No.676 of 1989 before the High Court. The appellate authority had dismissed the departmental appeal on 11.12 .1989. Subsequently, however, the High Court allowed the Criminal Revision by judgment dated 4.9.1992 and set aside the order of conviction and sentence on the ground that the prosecution has failed to establish the case against the petitioner. After acquittal in revision, the petitioner filed a representation 3.10.1992 to reinstate him in service. However, the authority decided to hold a departmental enquiry and placed the petitioner in deemed suspension from the date of his removal, i.e., 16.9.1989, by order dated 10.5.1993. Subsequently, charge memo dated 15.4.1994 was issued to the petitioner, which is being challenged in the present writ petition.

3. It is the contention of the petitioner that the charge memo dated 15.4.1994 is based on the very same allegations which were the subject matter in the criminal case, wherein ultimately the petitioner has been acquitted. It is further contended that the proceedings have been initiated after a long delay and at any rate, there is no jurisdiction under the Regulations applicable to bank employees for reopening of the departmental proceedings.

4. A counter affidavit has been filed on behalf of the bank refuting the contentions raised by the petitioner.

5. Learned counsel appearing for the petitioner has placed reliance upon the decision reported in 1999(3) SCC 679 (M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. AND ANOTHER) in support of his contention that once the petitioner was acquitted in the criminal case, departmental proceedings for the very same allegations should not have been initiated. He has also relied upon the decisions reported in 1994(28) Administrative Tribunals Cases 711 (SULEKH CHAND AND SALEK CHAND v. COMMISSIONER OF POLICE AND OTHERS) and 1993 Supp (1) S.C.C. 564 (PRAFULLA CHANDRA MOHAPATRA v. STATE OF ORISSA AND OTHERS) to strengthen such contention.

6. In 1993 Supp (1) SCC 564, after the order of acquittal, the person concerned was reinstated in service and was allowed to retire after attaining the age of retirement. Thereafter the authorities restarted the disciplinary proceedings. Keeping in view the peculiar facts and circumstances, the Supreme Court was of the view that there was no justification to restart the disciplinary proceedings after a long delay.

7.The decision reported in 1994(28) Administrative Tribunals Cases 711 related to the question of promotion. The department with-held the promotion on the ground that departmental proceedings was proposed to be undertaken even long after the acquittal in the criminal case. The Supreme Court observed :

 . . . the judgment acquitting the appellant of the charge under Section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be

that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. (Emphasis supplied)

It appears that similar view has been expressed by the Supreme Court in 1999(3) SCC 679 (cited supra).

8. Even though the aforesaid observation support the petitioner's submission to some extent, it cannot be held that the decisions have the effect of laying down an inexorable rule that in all cases where criminal case ends in acquittal, no departmental proceedings can be initiated or continued.

9. As a matter of fact in several decisions of the Supreme Court of higher strength, it has been held that acquittal in a criminal case will be no bar to initiate or continue a departmental proceeding.

10. In 1992 LAB.I.C. 2037 (NELSON MOTIS v. UNION OF INDIA AND ANOTHER), a Bench consisting of three judges, while considering the question observed as follows :-

 5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. . . .

11.In 1991 LAB.I.C. 1254 (THE FOOD CORPORATION OF INDIA v. GEORGE VARGHESE AND ANOTHER), a Bench consisting of three judges, almost under similar circumstances as in the present case, the Supreme Court had observed that acquittal in a criminal case was not a bar for initiating or continuing a departmental proceeding.

12. Similar view has been expressed in 1981 (II)S.C.W.R. 123 (CORPORATION OF CITY OF NAGPUR v. RAM CHANDRA & OTHERS) by three judges

Bench of the Supreme Court.

13. Similarly in 1997(2) S.C.C. 699 (DEPOT MANAGER, A.P. STATE ROAD TRANSPORT CORPORATION v. MOHD. YOUSUF MIYA AND OTHERS), similar views are expressed by three judges Bench.

14. It is true that many of such decisions have been referred to in 1999(3) S.C.C 679 (cited supra). However, a careful perusal of the decision makes it clear that the Supreme Court does not purport to take a different view, but in the peculiar facts and circumstances of the said case, the court is of the opinion that the departmental proceeding should not be continued. As a matter of fact most of these decisions including the decision of 1999(3) SCC 679 have been considered by a Division Bench of this High court in a decision reported in 200 2(2) M.L.J. 282 (THE STATE OF TAMIL NADU, REPRESENTED BY THE SECRETARY TO GOVERNMENT, CHENNAI AND OTHERS v. H.A. MUNAFF AND ANOTHER), it is observed :-

 26. On an analysis of the various decisions referred to above, the following principles emerge.

(a) Normally where the accused is acquitted honourably and completely exonerated of the charges, it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence;

(b) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately;

(c) Whenever criminal proceedings are initiated based on a delinquency committed by an employee, it will be in order if the departmental proceedings are deferred awaiting the conclusion of the criminal proceedings;

(d) If the criminal case does not proceed expeditiously or its disposal is being unduly delayed, the departmental proceedings can be resumed and proceeded with so as to conclude them at an early date.

(e) Mere acquittal of a government employee in a criminal proceedings will not wipe of his delinquency and it would be still open for the appropriate competent authority to proceed with the departmental inquiry as per law; and

(f) The standard of proof, mode of inquiry and the rules governing the departmental inquiry and trial in criminal proceedings are distinct and different.

15. Keeping in view the observations made in the aforesaid Division Bench decision, the decision taken by the disciplinary authority to initiate a disciplinary proceeding cannot be characterised as illegal or without jurisdiction so as to warrant interference.

16. Learned counsel for the petitioner has also submitted that there was delay in initiating the departmental proceedings. I am unable to accept the submission as initially the disciplinary authority had not started any departmental proceedings in view of the pendency of the criminal case and in fact the order of dismissal was passed on the order of conviction made by the criminal court. However, the petitioner was acquitted in revision in September 1992 and the departmental proceedings has been initiated soon thereafter. It cannot be said that there has been undue delay in initiation of the departmental proceedings.

17. It appears that initially an order of stay had been granted for 12 weeks, but the matter has not been listed subsequently. Since the stay order had not been extended, departmental proceedings continued and unfortunately, the petitioner did not attend the departmental proceedings may be because the writ petition was pending or may be he was not aware of the subsequent continuation of departmental proceedings. The fact remains that in the subsequent departmental proceedings, the petitioner was not able to cross-examine the witnesses examined on behalf of the Department. In the peculiar facts and circumstances of the case and in the interest of justice, I direct that the enquiry should be re-opened and an opportunity should be given to the petitioner to participate in such departmental proceedings, which should be completed as expeditiously as possible, preferably within a period of six months from the date of communication of this order.

18. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed, subject to the directions contained in paragraph 17. No costs.

Index : Yes
Internet : Yes
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To

Deputy General Manager,
Syndicate Bank,
Zonal Office,
Syndicate Bank Building,
Gandhi Nagar,
Bangalore 560 009.